[J-113A&B-2019][OFJC - Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: NOMINATION PAPERS OF SHERRIE COHEN AS CANDIDATE FOR THE OFFICE OF PHILADELPHIA CITY COUNCIL-AT-LARGE	:	Nos. 31 & 32 EAP 2019
	:	Appeal from the Order of the Commonwealth Court entered on 9/5/19 at Nos. 1157 &1158 CD 2019 affirming the order entered on 8/16/19 in the Court of Common Pleas, Philadelphia County, Civil Division at Nos. 701 & 703 August Term 2019
APPEAL OF: SHERRIE COHEN	:	SUBMITTED: September 30, 2019

DISSENTING OPINION

CHIEF JUSTICE SAYLOR **FILED: February 19, 2020**

The lead Justices fault the appellees for supplying no principled reason to distinguish between the voluntary withdrawal of a nomination petition within the Election Code's 15-day grace period, *see* 25 P.S. §2874, and a later withdrawal subject to the requirement of court approval, *see id.* §2938.4. *See* Lead Opinion, *slip op.* at 11. To the contrary, I find that appellee Alvarez, at least, has provided a persuasive explanation.

In this regard, appellee Alvarez couches the issue presented as:

> whether there should be an exception to the plain language of Section 976, which prohibits the filing of any nomination papers "if the candidate named therein has filed a nomination petition for any public office for the ensuing primary," for a candidate who actively participated in the primary election but petitioned to the court to withdraw her nomination after believing she could not win.

Brief for Appellee Alvarez at 6. Her argument proceeds to reconcile the *void ab initio* logic of *Packrall v. Quail*, 411 Pa. 555, 192 A.2d 704 (1963), with Section 976(e) of the Election Code, 25 P.S. §2936(e), as follows:

> The key determinant of whether someone has "filed a nomination petition" is whether someone has chosen to go through the primary process. [Appellant] chose to go through the primary process. She ran for office, sought endorsement, [and] was placed on the ballot. Only when her campaign began to falter did she choose to end it. This is distinct from *Packrall*, where the candidate withdrew before the primary process had begun.
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> [Appellant] would have it that candidates who cannot win after running in the primary could have their second chance as long as they quit the day before the primary election. This cannot be.
>
> Instead, the plain language of Section 976(e) should govern[.]

Id. at 11-13; *accord id.* at 7 ("The sore loser statute cannot be used to game the system.").

Although I agree with the lead Justices that *Packrall* should not be overruled,[1] its approach remains "arguably in tension with the plain language of the statute." *In re Benkoski*, 596 Pa. 267, 274, 943 A.2d 212, 216 (2007). Accordingly -- and consistent

[1] This Court has explained: "whenever our Court has interpreted the language of a statute, and the General Assembly subsequently amends or reenacts that statute without changing that language, it must be presumed that the General Assembly intends that our Court's interpretation become part of the subsequent legislative enactment." *Verizon Pa., Inc. v. Commonwealth*, 633 Pa. 578, 598, 127 A.3d 745, 757 (2015). Section 976 has been amended several times since *Packrall*'s issuance more than 50 years ago, but the Legislature has not altered the material language of the statute.

with the determinations of the intermediate and county courts -- it seems to me that *Packrall*'s effect should be confined to the scenario in which it arose, *i.e.*, a voluntary withdrawal of a nomination petition within the statutory grace period. *Cf. id.* (declining to extend *Packrall* for the benefit of candidates removed from ballots based on defects in their nomination petitions). In this regard, the concern about candidates being empowered -- contrary to the plain language of Section 976(e) -- to make strategic decisions to shift tracks after having proceeded deep into the primary process is particularly well founded.

For the above reasons, I would have affirmed, crediting the rationales of both the Commonwealth Court and the court of common pleas.

Justice Dougherty joins this dissenting opinion.